

California Regional Water Quality Control Board
Santa Ana Region

UPDATE TO THE

September 26, 2001

AGENDA

The following Administrative Civil Liability Complaints have been settled:

- | | |
|----|---------------------------------------|
| 9 | Michael Bidart, Loyola Dairy #1 |
| 10 | Glenn Gorzeman, Gorzeman Heifer Dairy |
| 11 | Larry Fricker Company |

The following Administrative Civil Liability Complaints have been postponed:

- | | |
|----|--------------------------------|
| 12 | Master Development Corporation |
| 13 | Kaufman & Broad |

Item 20 Update on Beach Closures has been postponed to the
October 26, 2001 Board Meeting, due to illness.

Changes and postponements may occur to this agenda. Such updates will be placed on our website and automatically forwarded immediately to those who subscribe to our electronic mailing list. Anyone wishing to subscribe to our electronic agenda mailing list may do so, as follows: go to www.swrcb.ca.gov/rwqcb8 and choose "Subscribe to Electronic Mailing Lists" from the homepage. Those who are not subscribers should visit our website prior to the board meeting date.

Supporting documents for agenda items are now posted on our website at least 7 days prior to the scheduled meeting. To view or download the documentation, go to www.swrcb.ca.gov/rwqcb8 and select the item of interest.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

September 26, 2001

ITEM: 10

SUBJECT: Administrative Civil Liability Complaint No. 01-78 – Glenn Gorzeman, Gorzeman Heifer Dairy

SUMMARY

Glenn Gorzeman, Gorzeman Heifer Dairy, is alleged to have violated California Water Code (CWC) Section 13376, which requires any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state to file a report of the discharge (Notice of Intent). On August 29, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACLC) No. 01-78 to Glenn Gorzeman for failing to file the requested Notice of Intent (NOI). The maximum liability that the Board could assess administratively under CWC Section 13385(c) for failure to file a report of discharge is \$10,000 per day of violation. The maximum assessment for this alleged violation is \$900,000. ACLC No. 01-78 assessed a civil liability of \$12,355. The matter before the Board is whether to affirm, reject, or modify this assessment.

BACKGROUND

The Regional Board began issuing individual waste discharge requirements to all dairies, and related facilities (heifer ranches and calf nurseries), in 1972. In 1994, the Regional Board adopted a general NPDES permit for concentrated animal feeding operations, including dairies, within the Santa Ana Region (Order No. 94-7). Order No. 94-7 was adopted to streamline the permitting process for dairies and related facilities, and to incorporate recent federal and state storm water regulations. Order No. 94-7 expired on March 1, 1999. Therefore, on August 20, 1999, the Regional Board adopted General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region, NPDES No. CAG018001 (Order No. 99-11). Operators of dairies and related facilities are required to submit a report of waste discharge (NOI) when they initiate a concentrated animal feeding operation at a new location. Following submittal of a NOI and filing fee, the executive office authorizes the operator to discharge wastes in accordance with Order No. 99-11.

FINDINGS

On August 29, 2000, Board staff conducted a routine inspection of the facility at 15822 Euclid Avenue, Ontario. Since the facility operator was unavailable, Board staff was not able to discuss the conditions of the containment structures at the facility with him and left a contact request at the adjacent residence. Board staff received a phone call from Walt Lekkerkerker, the owner of the property located at 15822 Euclid Avenue, Ontario,

on August 30, 2000, and was informed that the corrals were being rented by Glenn Gorzeman for the purpose of operating a heifer ranch. A certified letter was sent to Glenn Gorzeman, on August 31, 2000, requesting a completed Notice of Intent Form (NOI) and a filing fee of \$2,000. Receipt of the NOI request was confirmed by Karen Gorzeman, who signed the return receipt.

On September 6, 2000, Board staff received a phone call from Glenn Gorzeman, who stated that he intended to vacate the property by the end of September, and asked that he be allowed to remain on the premises for that period without a completed NOI and filing fee. Board staff chose not to pursue obtaining the NOI and filing fee at that time.

On October 4, 2000, Board staff observed that heifers were still on the premises. In response to staff's phone message, Glenn Gorzeman called on October 5, 2000 to inform Board staff that he would soon be moving the heifers to a location near Bakersfield. Mr. Gorzeman was unwilling to provide Board staff with an exact date of the anticipated move.

On November 3, 2000, Board staff again observed that heifers were still at the facility. Subsequently, on November 9, 2000, Board staff met with Mr. Lekkerkerker and was informed that Glenn Gorzeman was still renting the facility to house his heifers.

On April 12, 2001, Board staff inspected the facility and noted that several hundred heifers were still present. On May 11, 2001, the Executive Officer mailed a certified letter to Glenn Gorzeman, requesting submittal of a completed Notice of Intent and filing fee by May 22, 2001. The letter also addressed the potential for assessing civil liability for violation of Water Code Section 13376 if the NOI and filing fee were not submitted. The Regional Board received no response from Mr. Gorzeman.

On June 4, 2001, Board staff phoned Glenn Gorzeman who, again, informed Board staff that he would be moving the heifers very soon. When asked for a commitment date for the impending move, Mr. Gorzeman responded that it would be a couple of days before he could provide an exact date. Mr. Gorzeman stated that he would call Board staff by June 8, 2001, with the requested information. The call was never received and the information was never provided.

Between June 4, 2001, and July 27, 2001, Board staff conducted three drive-by inspections of the facility and observed that the heifers were still on the property. On August 13, 2001, Glenn Gorzeman, as a result of a phone call from Board staff, confirmed that his heifers remained at the facility.

On August 29, 2001, the Executive Officer issued ACLC No. 01-78 to Glenn Gorzeman, Gorzeman Heifer Dairy. ACLC No. 01-78 proposed that administrative civil liability be imposed on Glenn Gorzeman in the amount of \$12,355.

DISCUSSION

CWC Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are discussed below:

1. Nature, Circumstances and Gravity of the Violation

Glenn Gorzeman, while operating a heifer ranch, failed to submit a report of discharge (NOI) and filing fee as required by CWC Section 13376. As a result, he is liable civilly in accordance with CWC Section 13385(a)(1). Order No. 99-11 states that heifer ranches where the herd size is less than 50 animals are generally not required to obtain authorization under Order No. 99-11. Mr. Gorzeman's herd size is substantially greater than 50 animals and, therefore, is subject to Order No. 99-11. The NOI and filing fee are submittals required by the CWC, when the Regional Board determines that wastes are being discharged that could affect the quality of waters of the United States.

This facility has been operating without authorization to discharge for nearly a year. Glenn Gorzeman was given adequate notice of his obligation to provide the Regional Board with a completed NOI and to pay the required filing fee. Despite the Regional Board's second request for a completed NOI and filing fee in the May 11, 2001 letter signed by the Executive Officer, Mr. Gorzeman has not provided the report of discharge (NOI) and filing fee as required by the CWC.

2. Ability to Pay the Proposed Assessment

Board staff has no information to indicate that Glenn Gorzeman would be unable to pay the proposed assessment.

3. Any Prior History of Violations

During the time Glenn Gorzeman has operated Gorzeman Heifer Dairy, there have been no other violations observed.

4. Degree of Culpability

Glenn Gorzeman is entirely culpable for the violation of CWC Section 13376. He has failed to submit the required report of discharge (NOI) and filing fee, despite several attempts by Board staff to remind him of his obligation to do so.

5. Economic Benefits or Savings, if any, Resulting from the Violation

CWC Section 13385(e) states "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation". Glenn Gorzeman has received economic benefit by not providing the Regional Board with the \$2,000 filing fee, as well as an amount of interest gained from nonpayment of the filing fee. The proposed administrative civil liability recovers the economic benefit that was derived by failing to submit a complete NOI.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment proposed in Complaint No. 01-78. Further, staff recommends that the Board direct the Executive Officer to take appropriate steps to collect the assessment in the event that Glenn Gorzeman, Gorzeman Heifer Dairy, fails to pay the assessment in a timely manner.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

IN THE MATTER OF:

**Glenn Gorzeman
Gorzeman Heifer Dairy
15822 Euclid Avenue
Chino, CA 91710**

**COMPLAINT NO. 01-78
FOR
ADMINISTRATIVE CIVIL LIABILITY**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Glenn Gorzeman, Gorzeman Heifer Dairy, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region, (hereinafter Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code (Water Code).
2. A hearing concerning this complaint will be held before the Regional Board within 60 days of the date of issuance of this complaint, unless you waive your right to a hearing. Waiver procedures are specified on page 3 of the complaint. If the hearing in this matter is not waived, it will be held during the Regional Board's regular meeting on September 26, 2001, at the City Council Chambers of Corona, 815 W. 6th Street, Corona, CA. The meeting begins at 9:00 a.m. You or your representative will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. If the September 26, 2001, hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Glenn Gorzeman is alleged to have failed to file a report of waste discharge (Notice of Intent) with the Regional Board, in violation of Water Code Section 13376. Section 13385(a)(1) of the Water Code specifies that any person who violates Water Code Section 13376 shall be liable civilly in accordance with Water Code Section 13385.
5. The complaint is based on the following facts:
 - A. On August 29, 2000, Regional Board staff conducted an inspection of the Albert Goyenette Heifer Ranch at 15822 Euclid Avenue, Chino. No one was present, so Regional Board staff left a note at the residence. On August 30, 2000, the owner of the property at 15822 Euclid Avenue, Chino, called and informed Regional Board staff that Glenn Gorzeman was now renting the facility for the purpose of operating a heifer ranch.

- B. On August 31, 2000, Regional Board staff mailed a certified letter to Glenn Gorzeman, requesting that a Notice of Intent (serves as the report of waste discharge) for his heifer operation at 15822 Euclid Avenue, Chino, be completed and submitted to the Regional Board along with a \$2,000 filing fee by September 14, 2000. The Regional Board received no response from Mr. Gorzeman.
 - C. On September 6 and October 5, 2000, Regional Board staff spoke with Mr. Gorzeman. On September 6, 2000, Mr. Gorzeman informed Regional Board staff that the heifers would be removed from the facility by the end of the month. On October 5, 2000, Mr. Gorzeman informed Regional Board staff that he expected to move soon, but did not provide a date.
 - D. On April 12, 2001, Regional Board staff inspected the facility and noted that the heifers were still present. On May 11, 2001, the Executive Officer of the Regional Board mailed a certified letter to Mr. Gorzeman, requesting submittal of a completed Notice of Intent and filing fee by May 22, 2001. The letter also addressed the potential for assessing civil liability for violation of Water Code Section 13376. The Regional Board received no response from Mr. Gorzeman.
 - E. On June 4, 2001, Regional Board staff contacted Mr. Gorzeman. Mr. Gorzeman again stated that he would be moving the heifers, but was not sure of the specific date. Mr. Gorzeman said he would contact Regional Board staff by the end of the week (June 8) and provide a specific date. On June 18, 2001, Regional Board staff observed that the heifers were still present at the facility. Regional Board staff did not receive a return phone call from Mr. Gorzeman.
6. The Regional Board has determined that heifer ranches where the herd size is in excess of 50 shall be subject to permitting under General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) NPDES No. CAG018001, (Order No. 99-11). Mr Gorzeman's herd size is greater than 50 and is, therefore, subject to Order No. 99-11.
7. Section 13376 of the Water Code provides that any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state, shall file a report of the discharge. As provided by Water Code Section 13385 the Regional Board can administratively assess a civil liability in an amount not to exceed \$10,000 for each day in which a violation of Section 13376 occurs. Therefore, the maximum liability for the violation cited above which the Regional Board can assess administratively is \$980,000 (98 days of violation from May 23, 2001 through August 29, 2001).
8. Regional Board staff spent a total of 84 hours attempting to obtain the NOI and filing fee, preparing this complaint, and preparing for the Regional Board hearing on this matter (@ \$70 per hour, the total cost for staff time is \$5,880). This factor was considered in assessing the penalty indicated in paragraph 9, below.

9. Water Code Section 13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Based on consideration of those factors, it is proposed that administrative civil liability be imposed on Glenn Gorzeman in the amount of \$12,355.

WAIVER OF HEARING

You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability proposed in paragraph 9 above. Send the check and waiver to:

Santa Ana Regional Water Quality control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact Gerard J. Thibeault at (909) 782-3284, Stephen D. Mayville at (909) 782-4922, or contact the Regional Board's staff counsel, Ted Cobb at (916) 341-5171.

Date

Gerard J. Thibeault
Executive Officer